

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

MICHELLE ALLSOP,)	
)	Case No. 02-BK-13750 (PJW)
Appellant,)	
Movant below,)	Civil Action No.: 04-942-KJA
)	
v.)	
)	
DIAMLER-CHRYSLER FINANCIAL)	
COMPANY, LLC,)	
)	
Appellee,)	
Respondent below.)	

**APPELLEE, DAIMLER-CHRYSLER FINANCIAL COMPANY, LLC'S
MOTION TO DISMISS APPEAL WITH
MEMORANDUM OF POINTS AND AUTHORITIES**

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Appellee, DaimlerChrysler Services North America, LLC¹ hereby moves to dismiss this appeal for the failure of the Appellant to comply with U.S. Bankruptcy Court Rule 8006 and for the failure to comply with the briefing schedule set forth by this Court and as reasons, submits this Memorandum of Points and Authorities:

1. This is an appeal from a Bankruptcy Court, District of Delaware Memorandum Opinion and Order of the Hon. Paul B. Lindsey, dated June 23, 2004, a copy of which is located at this Motion’s Appendix A-1. Judge Lindsey’s decision followed an evidentiary hearing and denied the Debtor’s Motion for Rule to Show Cause (Bk DN 46).

2. The Notice of Appeal was docketed in this Court on August 13, 2004. While the debtor was represented by counsel for the evidentiary decision below, she is *Pro Se* in this appeal.

¹ The memorandum opinion and order from which appellant has appealed misnamed the respondent / appellee as “Daimler-Chrysler Services”. The correct entity name is “DaimlerChrysler Services North America, LLC”.

FAILURE TO COMPLY WITH RULE 8006

3. The bankruptcy Record on Appeal #AP-04-74 was transmitted to and received by the Clerk on August 13, 2004. The transmittal indicates that the Appellee had designated numerous items for the record, however, had not provided hard copies of any items. Accordingly, the only document transmitted by the Bankruptcy Court Clerk for the record on Appeal was the aforementioned Memorandum Opinion and Order. DN 3, A-7.

4. Mediation was unsuccessful and concluded by Mr. Sudell's letter to this court of September 24, 2004 (DN 6).

5. Federal Rule of Bankruptcy Procedure 8006 provides that:

Any party filing a designation of the items to be included in the record shall provide to the clerk a copy of the items designated or, if the party fails to provide the copy, the clerk shall prepare the copy at the party's expense. If the record designated by any party includes a transcript of any proceeding or a part thereof, the party shall, immediately after the filing the designation, deliver to the reporter and file with the clerk a written request for the transcript and make satisfactory arrangements for the payment of its cost.

6. Local Bankruptcy Rule 8006-1 provides that:

Each party to an appeal who designates portions of the record to be included in the record for such appeal shall provide the Clerk, along with such designation, (1) copy of each item of the record it designates to be included in the record on appeal and shall serve a copy of any item designated on all other parties to the appeal if requested.

7. As the Bankruptcy Clerk's transmittal states: "hard copies of the designated items have not been received". DN 3.

8. Almost 11 months have transpired from the filing of the appeal. Over 9 months have passed since unsuccessful mediation ended. Despite the passage of time, the appellee has failed to perfect her appeal by failing to provide for the transmittal of any documents for the

record on appeal, other than the actual Memorandum Opinion and Order from which she appeals.

FAILURE TO PROSECUTE

9. On April 25, 2005, the Appellee filed her proposed Briefing Schedule with the Court (DN 11). The Appellee proposed that she would file her opening brief by July 1, 2005, with an answering brief due July 11, 2005. As of July 7, 2005, no opening brief has been served on the undersigned and no brief has been docketed. A-9.

WHEREFORE, the Appellant respectfully requests that this Court dismiss this appeal for the failure to comply with Bankruptcy Rule 8006, Local Bankruptcy Rule 8006-1, and the failure to comply with the briefing schedule, and for such other relief as may be just.

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